UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Before the Honorable Steven C. Yarbrough
United States Magistrate Judge

Clerk's Minutes

15cv1107 MV/SCY

Davis v. USA Nutra Labs, et al.,
October 5, 2016

PLAINTIFF'S ATTORNEY PRESENT: Kurt Wihl, Cassandra Malone

DEFENDANTS' ATTORNEY PRESENT: Justin Rodriguez, Nathan Nieman

TYPE OF PROCEEDING: Discovery Hearing – FTR Hondo
Total Time – 1 hour and 45 minutes

COURT'S NOTES/RULINGS:

- The Court is in session. Counsel entered their appearances.
- The Court discussed the issues that will be addressed during the hearing. The Court stated that both discovery related to personal jurisdiction and discovery related to determining other potential defendants in light of the statute of limitations would be addressed. The Court discussed its general impressions regarding these issues.
- Ms. Malone addressed the Court. Ms. Malone discussed discovery previously obtained and information Plaintiff has not received regarding the relationship between USA Nutra Labs and other entities potentially associated with USA Nutra Labs.
- The Court inquired as to what further information Plaintiff is seeking to obtain. The Court discussed various lines of inquiry under a "stream of commerce" theory of personal jurisdiction.
- Ms. Malone addressed the Court's concerns. Ms. Malone represented that under some interpretations of stream of commerce, discovery previously obtained is sufficient; however, under others, further discovery would bolster a finding of personal jurisdiction. Ms. Malone represented that USA Nutra Labs has not been entirely forthcoming in its knowledge of how its products are distributed and sold.
- The Court discussed previously obtained discovery in relation to personal jurisdiction. The Court inquired as to how the discovery requested relates to personal jurisdiction.

- Ms. Malone clarified that further discovery requested would likely be in written form. Ms. Malone clarified that Plaintiff is requesting discovery related to how the product was manufactured. Further, Plaintiff would like to know who created information on the labels as well as who generated the bar code. Ms. Malone discussed discrepancies in previously obtained discovery responses.
- The Court discussed these alleged discrepancies. The Court inquired as to discovery regarding the manufacture of the product and how that relates to personal jurisdiction.
- Ms. Malone responded that the relevance of this discovery is dependent on the standard used to determine personal jurisdiction.
- The Court inquired as to discovery related to the amount of product sold to a distributor.
- Ms. Malone represented that these discovery requests would be written form and relate to the relationship between the various entities.
- The Court inquired as to how transactions outside of New Mexico would assist in the determination of personal jurisdiction.
- Ms. Malone discussed the relationship between these types of potential transactions and establishing personal jurisdiction. Ms. Malone also discussed its relevance in regard to alleged discrepancies in previously obtained discovery.
- Mr. Rodriguez addressed the Court. Mr. Rodriguez contended that no further discovery being requested relates to personal jurisdiction. Mr. Rodriguez contended that the issue is ripe for resolution on the legal question of personal jurisdiction. Mr. Rodriguez discussed federal authority rejecting the New Mexico Court of Appeals' decision in *Sproul*. Mr. Rodriguez discussed Plaintiff's allegations of discrepancies in discovery responses.
- The Court discussed the different standards for determining personal jurisdiction in relation to discovery previously produced.
- Mr. Rodriguez discussed the narrow circumstances in which the discovery Plaintiff is requesting would become relevant to the issue of personal jurisdiction. Mr. Rodriguez discussed why discovery related to the manufacturer is not relevant to personal jurisdiction. Mr. Rodriguez contended that the addition of the manufacturer to the lawsuit would raise further personal jurisdiction issues.
- The Court discussed concerns raised by Mr. Rodriguez.
- Mr. Rodriguez discussed the effect of adopting the rationale of *Sproul*. Mr. Rodriguez contended that not permitting further discovery is the most efficient process. Mr. Rodriguez discussed other possible remedies available to Plaintiff, including transferring the case to Georgia.
- The Court inquired as to issues related to Plaintiff choosing the appropriate forum should they pursue transfer of the case.
- Mr. Rodriguez discussed other discovery being sought and contended that it is not relevant to personal jurisdiction.
- The Court discussed discovery related to the amount of sales to other consumers and sales to possible national distributors.

- Mr. Rodriguez responded to the Court's concerns and contended that these subjects were addressed by previous discovery. Mr. Rodriguez further contended that such lines of inquiry cannot contribute to the determination of personal jurisdiction.
- The Court inquired into tailoring discovery to determine national distributors.
- Mr. Rodriguez contended that such discovery would present a significant burden on Defendant USA Nutra Labs. Mr. Rodriguez further contended that such discovery would be intrusive of Defendant's trade secrets.
- The Court further inquired regarding discovery narrowly tailored toward certain sales regarding previously identified national distributors.
- Mr. Rodriguez discussed the relevance of this type of discovery.
- The Court further discussed the standards for personal jurisdiction.
- Mr. Rodriguez discussed standards for determining personal jurisdiction previously adopted in this Court.
- Mr. Nieman addressed the Court. Mr. Nieman stated that his client takes no position on additional discovery directed toward Defendant USA Nurtra Lab. Mr. Nieman clarified the relationship between Groupon and other identified entities. Mr. Nieman contended that discovery directed toward Groupon would not assist in the determination of personal jurisdiction.
- Mr. Rodriguez addressed the Court and clarified statements previously made to the Court.
- Ms. Malone discussed discovery related to identifying the manufacturer. Ms. Malone contended that it is premature to consider the possible effect of adding the manufacturer as a party and what that entity would do once added. Ms. Malone contended that the standard applied in *Sproul* should be controlling.
- The Court inquired as to what discovery is being requested regarding national distributors or previously identified national distributors.
- Ms. Malone discussed the necessity of obtaining this discovery.
- Mr. Wihl addressed the Court. Mr. Wihl clarified that notice may be filed soon regarding mediation between Groupon and Plaintiff.
- Mr. Rodriguez addressed the Court. Mr. Rodriguez emphasized the motion is ripe for resolution and no further discovery is necessary.
- The Court inquired into how disclosing names of distributors is burdensome.
- Mr. Rodriguez addressed the Court's concerns. Mr. Rodriguez contended that this is sensitive information.
- Ms. Malone addressed the Court and responded to Mr. Rodriguez's contentions.
- The Court recessed.
- The Court is back in session. The Court ordered that it will deny Plaintiff's requests for additional discovery. The Court concluded that Plaintiff's request would not assist in the determination of whether personal jurisdiction can be established. As to the name of the manufacturer, Defendant will be ordered to produce the name of the manufacturer as of

November 18, 2016 if the motion to dismiss has not been resolved by the date. The Court discussed the factors at issue in determining that Defendant USA Nutra Labs should be ordered to produce this information. The Court encouraged the parties to confer regarding a protective order in regard to this information prior to November 18, 2016.

- Mr. Rodriguez inquired as to whether the information would be produced limited to "attorneys' eyes only."
- The Court sought clarification regarding Defendant USA Nutra Labs producing the information under this limitation.
- Mr. Rodriguez clarified his request.
- The Court stated that it would initially order that the information be produced under this limitation and that Plaintiff could pursue removing this limitation at a later date.
- Mr. Nieman inquired as to whether this information would be produced to Groupon as well.
- The Court stated that it would only be produced to Plaintiff but Groupon could move to obtain this information at a later date.
- Mr. Wihl discussed reasons why Groupon may desire this information.
- Mr. Nieman discussed why Groupon requests for access to this information.
- The Court reiterated that Groupon could move to obtain this information at a later date.
- Mr. Nieman clarified his position on requesting to receive this information at the same time as Plaintiff.
- The Court addressed Mr. Nieman's concerns, specifically Mr. Nieman's concerns regarding moving for the information during the pendency of Groupon's motion to compel arbitration.
- The Court concluded the hearing.